IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.161 OF 2004

Secretary, Padmabhushan Vasant
Data Patil Shikshan Sanstha : Petitioner
(Orig. Resp. No.1)

V/s.

Laxman Sakharam Gurav & Anr. : Respondents
(No.1 Orig. Appellant
No.2 Orig.Resp.No.2)

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Mr.R.G.Ketkar for the petitioner.

Ms Ranjana Todankar i/b. Mr.S.S. Pakale for respondent no.1.

Mr.M.H.Solkar, Asstt. Govt. Pleader for respondent no.2.

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**CORAM : S.A. BOBDE, J.**

March 9, 2005.

P.C.:

1. Rule, returnable forthwith.

Ms Todankar for respondent no.1 and Mr.Solkar, learned Asstt. Govt. Pleader for respondent no.2, appear and waive service of rule.

Heard by consent.

2. The petitioner-management has challenged the order of the School Tribunal rejecting its application for amendment to the Written Statement.

3. The dispute between the parties is about the validity of the termination of respondent no.1. According to the petitioner, respondent no.1 was terminated by order dated 3.3.1994 with effect from 31.3.1994. Respondent no.1 has, however, pointed out in his appeal that he has worked even thereafter in the year 1995. Earlier, the matter came to this Court in Writ Petition no.3926 of 2002 which was decided on 1.8.2002 in which this Court noticed that the petitioner's contention that the services were terminated with effect from 31.3.1994 has not been considered by the School Tribunal at all. This Court, therefore, remanded the matter to the School Tribunal for a fresh decision.

4. After the remand, the petitioner asked for amendment of the Written Statement in order to plead that respondent no.1 has signed the muster-roll after the date of termination in connivance with an ex-Clerk Mahamuni. This application has been rejected by the School Tribunal. There seems to be no valid reason why the School Tribunal should have rejected the application for amendment to the Written Statement. The School Tribunal ought to have noticed the fact that this Court remanded the matter at

the instance of the petitioner for considering whether there is any evidence that respondent no.1 has worked after 31.3.1994. However, according to the School Tribunal, in the reply to the application for condonation of delay, because the petitioner pleaded that respondent no.1's services were terminated by order dated 31.3.1995, the plea now taken i.e. to say that the respondent no.1's signatures on the muster-roll were the result of connivance with one ex-Clerk, viz., Mahamuni, is an after-thought and completely changes the petitioner's earlier version. It is obvious that the amendment sought by the petitioner is clarificatory in nature and the statements made in reply to the application for condonation of delay cannot be allowed to come in the way of a substantial defence. The credibility of different statements being made at different places may, however, be adjudged by the Tribunal at the time of hearing of the appeal. This the Tribunal certainly is free to do. However, there is no reason for rejecting the application for amendment to the Written Statement.

5. In the circumstances, the petition must succeed. The application for amendment to the Written Statement made by the petitioner is allowed. The appeal may be decided on its own merit, uninfluenced by the observations made in this order. The rule is made absolute in the aforesaid

terms.

Sd/-

S.A. BOBDE, J.